Supreme Court, U.S.
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No. 91-1721

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

NORTHEASTERN FLORIDA CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA,

Petitioner,

v.

CITY OF JACKSONVILLE, FLORIDA and ED AUSTIN, in his official capacity as Mayor of the City of Jacksonville,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED APRIL 27, 1992
CERTIORARI GRANTED OCTOBER 5, 1992

No. 91-1721

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SUPREME COURT OF THE UNITED STATES
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* These documents were printed in the Appendix to the Petition for Writ of Certiorari and, pursuant to Rule 26.1 of the Rules of this Court, are not reproduced in this Joint Appendix.

DOCKET FOR
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Docket No. 89-00278 Filed 4/4/89

CAUSE: Title 42 Sec. 1983 - Other Civil Rights - violation of Equal Protection

PLAINTIFFS:	**DEFENDANTS:**
NORTHEASTERN FLORIDA CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, a Florida Corporation not for profit	CITY OF JACKSONVILLE, FLORIDA, a Florida Municipal Corporation TOMMY HAZOURI[1], in his official capacity as Mayor of the City of Jacksonville; DUVAL COUNTY SCHOOL BOARD, a body corporate and politic; STAN JORDAN, in his

[1]Tommy Hazouri is no longer Mayor of the City of Jacksonville. Petitioner and Respondent have substituted the current Mayor, Ed Austin, in the caption of this case pursuant to Rule 35.3 of the Rules of this Court.

official capacity as Chairman of the Duval County School Board.

4/4/89 **COMPLAINT** for Declaratory and Injunctive Relief.

4/4/89 **MOTION** for Temporary Restraining Order by Plaintiff.

4/4/89 **MOTION** for Preliminary Injunction by Plaintiff.

4/4/89 **BRIEF** in Support of Plaintiff's Motion for Preliminary Injunction and Motion for Temporary Restraining Order.

4/4/89 **APPENDIX** to Plaintiff's Motion for Temporary Restraining Order and Motion for Preliminary Injunction by Plaintiff.

4/4/89 **CERTIFICATE** of Service of nos. (1 through 7) by personal service upon James L. Harrison, City of Jacksonville, General Counsel by plaintiff.

4/4/89 **TEMPORARY** Restraining Order. The Motion for Temporary Restraining Order is **GRANTED,** (2) and Defendants, their representatives, agents, and employees are temporarily prohibited from using racial or ethnic criteria in deciding whether bids submitted on contracts are responsive, whether such bids will be considered, and whether contracts will or will not be awarded to one who submits a bid which does not satisfy a racially based set-aside or participation requirement, until such time as the

parties can be heard further on Pltf's Motion for Preliminary Injunction. Defts STAN JORDAN and the DUVAL COUNTY SCHOOL BOARD are **ENJOINED** from enforcing any MBE set-aside or participation requirements with respect to pending invitation to bid number XF-0117-89 until hearing on Pltf's Motion for Preliminary Injunction and further order of this Court.

4/10/89 **MOTION** for Taking of Testimony at Hearing in Motion for Preliminary Injunction with MEMO in Support of attached.

4/10/89 **ORDER:** Pltf's Motion for Taking of Testimony is **DENIED**.

4/10/89 **MEMO** of Defts in Opposition to motion for Preliminary Injunction.

4/11/89 **RECORD** of Hearing on Pltf's Motion for Preliminary Injunction.

4/20/89 **ORDER:** Pltf's Motion for preliminary injunction is **GRANTED**. Defts and their representatives, agents, and employees are hereby **ENJOINED** from enforcing, pursuing or taking any further action to implement Ordinance Number 83-1200-647.

4/28/89 **ANSWER** of Defts; to Complaint

5/12/89 **NOTICE** of **appeal** (of order 27 granting the Pltfs motion for preliminary injunction, ... by Defts CITY OF

JACKSONVILLE, FLORIDA and TOMMY HAZOURI.

7/10/89 **MOTION** for judgment on the pleadings or, in the alternative, summary judgment/with memo thereon, by Defts.

7/21/89 **RESPONSE** to Motion for Judgment on the Pleadings or, in the Alternative, Summary Judgment by Pltf.

7/21/89 **ATTACHMENT "A"** to Pltf's Response to Defts' MEMO in Support of Defts' Motion for Judgment on the Pleadings or, in the Alternative, Summary Judgment.

10/20/89 **MOTION** for Summary Judgment by Pltf.

10/20/89 **STATEMENT** of Material Facts as to which there exists no Genuine Issue by Pltff.

10/20/89 **MEMO** in Support of Pltf's Motion for Summary Judgment

11/01/89 **RESPONSE** and MEMO in Opposition to Pltf's Motion for Summary Judgment by Defts. CITY OF JACKSONVILLE, FLORIDA and TOMMY HAZOURI.

1/4/90 **NOTICE** of Supplemental Authority to Defts' CITY OF JACKSONVILLE, FLORIDA and TOMMY HAZOURI, Response and MEMO in Opposition to Pltf's Motion for Summary Judgment; by Defts' CITY OF JACKSONVILLE and TOMMY HAZOURI.

4/6/90 **RECEIVED** certified copy of Judgment, opinion, bill of costs and 2 volumes of the record on appeal from the United States Court of Appeals.

4/6/90 **JUDGMENT**: it is ordered and adjudged that the order of the District Court appealed from in this cause is hereby REVERSED; and that this cause is REMANDED to said District Court for further proceedings in accordance with the opinion of this Court; It is further ordered that pltf-appellee pay to deft-appellants, the cost on appeal to be taxed by the Clerk of this Court. TJOFLAT, Chief Judge, specially concurred and filed an opinion. (27) EOD March 2, 1990. ISSUED AS MANDATE; April 4, 1990. (copy to JHM).

4/6/90 **OPINION** of the United States Court of Appeals. MR 117/0685.

5/3/90 **RECORD** of Hearing on Proceedings of Final-Pretrial Conference.

5/3/90 **PRE-TRIAL ORDER;**

5/31/90 **ORDER GRANTING Pltf's MOTION FOR SUMMARY JUDGMENT.** Defts' Motion for Judgment on the Pleadings or, in the Alternative, Summary Judgment is **DENIED**, and that Pltf's Motion for Summary Judgment is **GRANTED**.

6/6/90 **NOTICE** of Appeal.

7/2/90	**MOTION** for Attorney's Fees by Pltf.
7/2/90	**BRIEF in Support of Pltf's Motion for Attorney's Fees;** by Pltf.
7/23/90	**RESPONSE** to Motion for Attorney's Fees by Defts.
1/24/91	**ORDER** on attorneys' fees. Pltf's motion for attorney's fees is GRANTED, and the Deft. shall pay to the Pltf. the sum of $22,630.00 as and for the Pltf's attorney's fees.
2/13/91	Amended **NOTICE OF APPEAL** by City of Jacksonville, Tommy Hazouri
2/24/92	**ORDER OF USCA**: It is ordered that the judgment of the district court is vacated and this cause is remanded to said district court with instructions in accordance with the Opinion of this Court. Mandate date: 2/20/92
9/30/92	**ORDER OF DISMISSAL**: this cause is hereby dismissed without prejudice mooting motion for continuance of trial, mooting motion for entry of judgment, mooting motion for entry of judgment in favor of defendants, mooting motion for Pretrial Evidentiary Ruling (Signed by Chief Judge John H. Moore II, counsel notified)
9/30/92	Case closed

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

NORTHEASTERN FLORIDA CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, a Florida Corporation not for profit,

Case No. 89-278-Civ-J-16

Plaintiff,

v.

CITY OF JACKSONVILLE, FLORIDA, a Florida Municipal Corporation; TOMMY HAZOURI, in his official capacity as Mayor of the City of Jacksonville; THE DUVAL COUNTY SCHOOL BOARD, a body corporate and politic; and STAN JORDAN, in his official capacity as Chairman of the Duval County School Board,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW Northeastern Florida Chapter of the Associated General Contractors of America, Plaintiff in the above-styled action, and states its complaint as follows:

PRELIMINARY STATEMENT

1. This is an action for a declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202, declaring Jacksonville City Ordinance Number 83-1200-647 (hereafter "Ordinance 83-1200-647") and Subchapter 13 of the Rules of the Duval County School Board (hereafter "Subchapter 13") to be invalid, unconstitutional, and null and void on their face and as applied, because the challenged provisions of the Jacksonville Ordinance and School Board Rule:

(1) violate the Fourteenth Amendment of the United States Constitution;
(2) violate 42 U.S.C. §1981; and
(3) deny rights protected by and enforceable under 42 U.S.C. §1983.

2. This action also seeks a temporary restraining order and preliminary injunction, enjoining and restraining Defendants, their successors in office, their agents, servants, employees, directors, and all persons acting in concert therewith or under their direction from: (1) setting aside, pursuant to Ordinance 83-1200-647 or Subchapter 13, any construction contracts for bidding by minority business enterprises ("MBEs") only; (2) attempting to require, pursuant to Ordinance 83-1200-647 or Subchapter 13, any contractor or subcontract a specified percentage of any construction contract to a MBE; (3) setting aside, pursuant to Ordinance 83-1200-647 or Subchapter 13, any contracts to be awarded for procurement of equipment, materials, supplies, and/or service contracts for bidding by MBEs only; and/or (4) from invoking or seeking enforcement of or taking any action whatsoever to apply Ordinance 83-1200-647 or Subchapter 13 against Plaintiff or any of the members of the Plaintiff.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §1331(a) because the matter in controversy arises under the Constitution and laws of the United States.

4. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §1343(3) and (4) because these are civil claims seeking declaratory and injunctive relief to redress the deprivation, under color of state law, of rights, privileges and immunities secured by the Constitution and Acts of Congress protecting equal rights.

5. Venue in this district is proper pursuant to 28 U.S.C. §1391(b) because the claims arise in this district and also because the defendants reside and act in their respective official capacities in this district.

NATURE OF THE ACTION

6. This is a proceeding for a preliminary injunction to enjoin the Defendants from continuing to enforce the provisions, policies and regulations of Ordinance 83-1200-647 and Subchapter 13. It is also a proceeding for declaratory judgment to declare the legal rights and relations of the parties to this controversy.

7. Because of the gravity of the actual and threatened harm to Plaintiff and its members from the actual and threatened enforcement by Defendants of Ordinance 83-1200-647 and Subchapter 13 and regulations and procedures promulgated thereunder, Plaintiff seeks a speedy hearing of this case.

8. In view of the Defendants' actual enforcement of the aforesaid Ordinance 83-1200-647 and Subchapter 13 and regulations

promulgated thereto which require that certain percentages of City and School Board contracts be awarded to minority firms and Plaintiff's contention that such regulations and procedures are null and void, of no force and effect and unauthorized by law, or any law, regulation, administrative order whether by Ordinance 83-1200-647, Subchapter 13 or other legislative enactment, there is an actual controversy within the jurisdiction of this Court. A binding declaration by this Court will effectively adjudicate the rights of the parties. To delay further may result in thousands and millions of dollars of City and School Board contracts being ultimately found void at a subsequent date. Therefore, an immediate resolution and decision on this matter is necessary.

THE PARTIES

9. Plaintiff Northeastern Florida Chapter of the Associated General Contractors of America (hereinafter referred to as "AGC"), is a Florida corporation not-for-profit with its principal offices and place of business in Duval County, Florida. The AGC is organized for the purpose of furthering the interests of general contractors, subcontractors and suppliers in the construction industry. Plaintiff is a trade association which has membership comprised of, inter alia, 240 general contractors, subcontractors, suppliers, and associates many of whom regularly bid on and perform construction work for the City of Jacksonville and Duval County. Most of Plaintiff's members are not minority business enterprises as defined in §126.603 of the City of Jacksonville Purchasing Code or §13-3 of the Duval County School Board, such members of Plaintiff AGC are expressly excluded from bidding on construction contracts set aside by the City of Jacksonville or the Duval County School Board.

10. Defendant City of Jacksonville is a municipal corporation located in Duval County, Florida. Defendant exists under the authority of the laws of the State of Florida and at all times material to this cause was and is acting under color of state law.

11. Mr. Tommy Hazouri is the Mayor of the City of Jacksonville, and at all times material to this cause was and is acting under color of state law.

12. The Duval County School Board is a body corporate and politic existing under the authority of the laws of the State of Florida and at all times material to this cause was and is acting under color of state law.

13. Mr. Stan Jordan is the Chairman of the Duval County School Board, and at all times material to this cause was and is acting under color of state law.

THE JACKSONVILLE MINORITY BUSINESS ENTERPRISE ORDINANCE

14. The City Council of the City of Jacksonville enacted Ordinance Number 83-1200-647, a copy of which is included in the Appendix.

15. The stated purpose of Ordinance 83-1200-647 is to permit the City:

> ...to correct "past inequities and disparities" which have "disadvantaged Minority Business Enterprises in awarding of contracts by the City" and to address the fact that "Minority Business Enterprises have been disadvantaged in their participation in the general welfare of the City and in City

expenditures for service, supplies and materials."

In addition, "in the exercise by the City of its powers to make expenditures and to provide for the general welfare, to remedy such disadvantaged participation."

16. Following the enactment of Ordinance 83-1200-647 it was incorporated within §126.601, et. seq. of the City of Jacksonville Purchasing Code.

17. Pursuant to §126-603(a) of the Jacksonville Purchasing Code a minority business enterprise (MBE) is defined as:

> ...a commercial or industrial enterprise, at least fifty percent of which is owned by minority group members or by women or, in the case of a publicly-owned enterprise, at least fifty-one percent of the stock of which is owned by minority group members or by women.

18. Pursuant to §126.603(b) of the Jacksonville Purchasing Code the following persons are members of a minority group: black, Spanish-speaking American, Oriental, Indian, Eskimo, Aleut and handicapped.

19. Under the Jacksonville MBE program ten percent of the total amount appropriated for capital improvements during the fiscal year is set aside for minority business enterprises.

20. The City of Jacksonville, prior to the enactment of its MBE program or until this date, has not established that a racially based program is needed to remedy the effects of past racial discrimination in the City of Jacksonville.

THE DUVAL COUNTY SCHOOL BOARD MINORITY BUSINESS ENTERPRISE ORDINANCE

21. The School Board adopted a minority business enterprise participation plan in Subchapter 13 of the Rules of the Duval County School Board. The plan was adopted pursuant to the Board's rule making authority under Florida Statute §§230.03 and 230.22(2) and was implemented pursuant to Florida Statute §§235.31 and 287.094.

22. Section 13-2 of the MBE plan states that the Subchapter shall apply to all contracts funded in whole or in part by School Board funds, provided there be an exemption from the requirements of the Subchapter for any contract on which a minority business enterprise requirement is imposed by State or Federal law or otherwise supersedes or is prohibited by State or Federal law.

23. Section 13-4(a) of the School Board MBE plan provides that the Board's director for facilities planning shall set aside for minority business enterprises ten percent (10%) of the total amount appropriated for capital improvement to be awarded during each fiscal year, with certain adjustments.

24. Section 13-3(c) defines "minority business enterprise" ("MBE") as "a commercial or industrial enterprise, at least fifty percent of which is owned by minority group members or by women or, in the case of a publicly owned enterprise, at least fifty-one percent of the stock of which is owned by minority group members or by women."

25. Section 13-3(c) defines "minority group member" as "a person who is, or considers herself or himself to be, in one of the following classes as defined and described by the Equal Employment

Opportunity Commission: Black, Spanish-speaking American, Oriental, Indian, Eskimo, Aleut, and handicapped."

26. Section 13-6 of the School Board MBE plan provides that pre-qualification procedures and guidelines for an MBE shall be established and instituted by the director of the facilities planning and approved by the Board, with the director of facilities planning making the initial determination as to the pre-qualification of a minority business enterprise and whether it shall be admitted to the list of pre-qualified bidders. The plan further provides that an MBE that is denied pre-qualification shall have the right to appeal the denial to the School Board, whose decision shall be final.

27. Section 13-6(c) provides that the School Board, through its designee for bid evaluation, shall determine the amount of premium for the required performance bond, with the cost of that premium being paid for by the School Board.

28. Section 13-7 of the School Board MBE plan provides that an MBE awarded a contract under the plan shall make every endeavor to expend as much of the contract as possible for MBE subcontractors, with at least fifty percent of the contract required to be set aside for MBE contractors unless a greater or lesser percentage is specified in the invitation to bid or request for proposal.

29. Prior to the enactment and implementation of the School Board MBE set aside plan and until this date, the School Board has conducted no studies to determine whether or not there is a need to adopt racially based measures to remedy the effects of past racial discrimination within Duval County.

THE CITY OF JACKSONVILLE AND DUVAL COUNTY SCHOOL BOARD'S MINORITY BUSINESS PROGRAMS DO NOT HAVE AN ADEQUATE FACTUAL BASIS

30. By using an MBE set aside the City of Jacksonville and the Duval County School Board are engaged in a course of conduct which discriminates on the basis of race and ethnic origin among contractors, subcontractors and material suppliers bidding for projects.

31. The Defendants use racial and ethnic criteria for determining whether bids received for capital improvement projects are responsive.

32. Defendants do not have an adequate factual basis for their MBE programs. Because there is no evidence that there has been racial discrimination by the City of Jacksonville, Duval County, or others in the construction industry in Jacksonville and Duval County, the City of Jacksonville and the School Board do not have a compelling interest in the utilization of racial and ethnic criteria in the awarding of public contracts.

33. Prior to the filing of this action, Plaintiff, and Plaintiff's counsel, have inquired of Defendants as to the existence of any evidence of racial discrimination in Jacksonville or Duval County, either by the City or County, or by private individuals and firms, in the construction industry.

34. Prior to the filing of this action, Plaintiff's counsel advised Defendants Hazouri and Jordan, by letter dated February 28, 1989, that, in the opinion of counsel, and in light of the U.S. Supreme Court's recent decisions and other applicable authority, the current Jacksonville and School Board MBE programs were unconstitutional.

35. In response to a letter from a representative of Plaintiff, Mr. Daniel W. Haskell, Deputy Director of Central Services and Chief Purchasing Officer of the City of Jacksonville, and the individual responsible for administering the Jacksonville MBE program stated the following:

> "In response to your correspondence of February 2, 1989, please be advised that this office is not in possession of any documents that evidence or refer to any past racial or ethnic discrimination by the City of Jacksonville on projects let by the City of Jacksonville; nor any document which the City of Jacksonville contends establishes the basis for the need for a minority set aside program in construction work.
>
> As the official custodian of the records of the City of Jacksonville's Purchasing Division, I have access only to those records in my possession. The above response is in reply only to any records in my custody under the provisions of the Public Records Act."

36. Later in a memorandum dated March 21, 1989, to the Duval County School Board from Herb A. Sang, Superintendent of Schools, Mr. Sang recommended, "That the Duval County School Board consider a recommendation by General Counsel Jim Harrison that agencies of Consolidated City of Jacksonville temporarily discontinue current MBE Set Aside Programs pending results of a joint study on this matter."

37. To the extent that there may ever have been discrimination against members of a minority group, as defined by Ordinance 83-1200-647 or Subchapter 13, in the award of City or School Board contracts in the past, there is no evidence that the effects of that discrimination are continuing.

38. Subject to the ongoing investigation being conducted by the City of Jacksonville, there is no evidence that members of a minority group, as defined by Ordinance 83-1200-647 or Subchapter 13, have ever been discriminated against by the City of Jacksonville or the Duval County School Board.

39. Defendants have not conducted any inquiry into the existence of discrimination in the Jacksonville or Duval County construction industry.

40. In spite of continuing advice and recommendations to the contrary, Defendants City of Jacksonville and Duval County School Board, have adamantly refused to suspend their MBE programs pending studies to determine if a need for racially based programs exists with the City of Jacksonville and Duval County.

DEFENDANTS' MBE SET ASIDE PROGRAMS ARE NOT NARROWLY TAILORED TO REMEDY ANY PRIOR RACIAL DISCRIMINATION

41. The use by Defendants City of Jacksonville and the Duval County School Board of the figure "10%" in their racially-conscious contract award programs is arbitrary, in that the figure ten percent is not rationally related to any relevant statistic and does not reflect a percentage of any relevant population group.

42. The present imposition by the City of Jacksonville of race-conscious methods of awarding contracts in unlimited in time and, therefore, is not narrowly tailored to the elimination of any continuing effect of any prior discrimination but is, rather, simply a method of apportioning public funds among individuals and corporations along racial and ethnic lines.

43. The inclusion by the City of Jacksonville and the Duval County School Board in the race-conscious set aside program of racial and ethnic groups against whom no racial or ethnic discrimination has ever occurred in Jacksonville or Duval County makes the programs overly broad and demonstrates that they are not programs designed to remedy any continuing effects of any prior racial discrimination in Jacksonville or Duval County, but are, rather, simply a method of apportioning public funds among individuals and corporations along racial and ethnic lines.

COUNT ONE
THE SET ASIDE AND SUBCONTRACTING PROVISIONS OF THE JACKSONVILLE AND COUNTY SCHOOL BOARD MINORITY BUSINESS ENTERPRISE ORDINANCES VIOLATE THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

44. Plaintiff repeats and realleges paragraphs 1 through 43 of its Complaint as though fully set forth herein.

45. The Defendants, acting pursuant to the provisions of the Ordinance 83-1200-647 and Subchapter 13, have set side construction and procurement contracts and have restricted bidding on and awarding of such contracts to only MBEs.

46. Numerous non-minority members of Plaintiff AGC would have been eligible to, and would have, bid on such designated set aside contracts but for the restrictions imposed on such contracts by the Defendants pursuant to Ordinance 83-1200-647 and Subchapter 13.

47. The Defendants, acting pursuant to the provisions of

Ordinance 83-1200-647 and Subchapter 13, have required that all contractors awarded City or School Board construction contracts must subcontract at least ten percent (10%) of such contracts to MBEs, thus requiring members of Plaintiff to discriminate on account of race in awarding subcontracts on City and School Board general contracts.

48. Numerous non-minority members of Plaintiff have been damaged economically by being required to discriminate in the award of subcontracts so as to satisfy the 10% minority participation requirement.

49. Numerous non-minority members of Plaintiff AGC have been damaged by such actions of the Defendants because they have ben deprived of substantial economic and business opportunities by being precluded from bidding on and performing subcontracts for persons holding construction contracts who have been required to award such subcontracts to MBEs.

50. Enforcement by the Defendants of the minority set aside and subcontracting provisions of the Jacksonville and the School Board MBE ordinances have deprived, and will continue to deprive, numerous non-minority members of Plaintiff AGC of equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution by requiring them to discriminate on the basis of race, and by discriminating against them on the basis of race.

51. Defendants, city and county officials acting under color of (city/state) law at all times relevant to this Complaint, have deprived numerous non-minority members of the Plaintiff of rights, privileges, and immunities secured by the Fourteenth Amendment to the United States Constitution and should therefore be enjoined, pursuant to 42 U.S.C. §§1981 and 1983, from such actions and deprivations.

52. Because of such constitutional deprivations, numerous non-minority members of the Plaintiff AGC have suffered, and will continue to suffer, irreparable harm and do not have an adequate remedy at law to terminate such discrimination and to recover the lost business opportunities and profits they have suffered and will continue to suffer because of said practices of the Defendants.

53. Unless restrained by this Court, Defendants will continue to enforce and administer Ordinance 83-1200-647 and Subchapter 13, as described in the preceding paragraphs.

COUNT TWO
THE JACKSONVILLE AND DUVAL COUNTY MINORITY BUSINESS ENTERPRISE ORDINANCE DISCRIMINATE ON THE BASIS OF RACE IN VIOLATION OF 42 U.S.C. §1981

54. Plaintiff repeats and realleges paragraphs 1 through 53 of its Complaint as though fully set forth herein.

55. Defendants, by applying and administering Ordinance 83-1200-647 and Subchapter 13, discriminate against numerous non-minority members of Plaintiff AGC on the basis of race thereby denying Plaintiff's members equal protection of the laws under the Fourteenth Amendment to the United States Constitution, and further violating rights protected under 42 U.S.C. §§1981 and 1983.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

a. Entry of a judgment declaring that Ordinance 83-1200-674,

Subchapter 13 and the rules and regulations promulgated thereunder are unconstitutional insofar as they are applied to deprive Plaintiff and others similarly situated of rights secured by the Constitution of the United States; and

b. A declaration that the administration and enforcement of Ordinance 83-1200-647 and Subchapter 13 by the Jacksonville City Council and the Duval County School Board violate Plaintiffs's rights under the Constitution and the laws of the United States and the State of Florida; and

c. Entry of a Temporary Restraining Order and/or a Preliminary Injunction prohibiting Defendants from placing any MBE goal on any City contracts, or form refusing to award such contract to a prime contractor whose bid is the lowest and best but fails to satisfy the MBE goal; and

d. Entry of a permanent injunction prohibiting the Defendants from enforcing Ordinance 83-1200-647 and/or Subchapter 13; and

e. Award to Plaintiff its costs and attorney fees pursuant to 42 U.S.C. §1988; and

f. Such other, further and additional relief as the Court may deem just and equitable.

RESPECTFULLY SUBMITTED this 4th day of April, 1989.

/s/
WILLIAM O. MILLER

/s/
G. STEPHEN PARKER
(Trial Counsel)

/s/
ROBERT B. BAKER
(Trial Counsel)

SOUTHEASTERN LEGAL FOUNDATION, INC.
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/s/
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Florida Bar No. 12838

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(904) 358-3705
Attorneys for Plaintiff

VERIFICATION

I, Richard L. Hardy, declare that I am President of the Northeastern Florida Chapter of the Associated General Contractors of America and in such capacity am authorized to execute this verification on its behalf. I have read the above Complaint for Declaratory and Injunctive Relief and know its contents in the same is true and correct to the best of my personal knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed this 4th day of April, 1989 at Jacksonville, Florida.

/s/
Richard L. Hardy, President
Northeastern Florida Chapter of
the Associated General Contractors
of America.

Sworn to and subscribed before
me this 4th day of April, 1989.

Connye V. Kennedy
Notary Public, State of Florida
My Commission Expires Oct. 18, 1992
Bonded through Notary Public Underwriters.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

NORTHEASTERN FLORIDA CHAPTER OF
THE ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, a Florida Corporation
not for profit,

Case No. 89-278-Civ-J-16

Plaintiff,

v.

CITY OF JACKSONVILLE, FLORIDA, a
Florida Municipal Corporation;
TOMMY HAZOURI, in his official
capacity as Mayor of the City of
Jacksonville; THE DUVAL COUNTY
SCHOOL BOARD, a body corporate
and politic; and STAN JORDAN, in
his official capacity as Chairman
of the Duval County School Board,

Defendants.

ANSWER

The Defendants, City of Jacksonville, Florida, Tommy Hazouri, The Duval County School Board and Stan Jordan, hereby answer the Complaint for Declaratory and Injunctive Relief filed by the Plaintiff,

Northeastern Florida Chapter of the Associated General Contractor of America, as follows:

1. The allegations contained in paragraph (1) of the Complaint are admitted.

2. The allegations contained in paragraph (2) of the Complaint are admitted.

3. The allegations contained in paragraph (3) of the Complaint are admitted.

4. The allegations contained in paragraph (4) of the Complaint are admitted.

5. The allegations contained in paragraph (5) of the Complaint are admitted.

6. The allegations contained in paragraph (6) of the Complaint are admitted.

7. The allegations contained in paragraph (7) of the Complaint are denied and the Defendants further affirmatively assert that no actual or threatened harm has been or is being suffered by the Plaintiffs because of the enforcement of the subject Ordinance.

8. The allegations contained in paragraph (7) of the Complaint are denied and the Defendants further affirmatively assert that enforcement of the subject Ordinance will not result in damages to the Plaintiff nor will any contract of the Defendant be found void.

9. As to the allegations contained in paragraph (9) of the Complaint, the Defendants have no knowledge and the paragraph is therefore denied.

10. The allegations contained in paragraph (10) of the Complaint are admitted.

11. The allegations contained in paragraph (11) of the Complaint are admitted.

12. The allegations contained in paragraph (12) of the Complaint are admitted.

13. The allegations contained in paragraph (13) of the Complaint are admitted.

14. The allegations contained in paragraph (14) of the Complaint are admitted.

15. The allegations contained in paragraph (15) of the Complaint are denied and the Defendants further affirmatively assert that the subject Ordinance speaks for itself and the Court should determine its content, import and interpretation.

16. The allegations contained in paragraph (16) of the Complaint are admitted.

17. The allegations contained in paragraph (17) of the Complaint are admitted.

18. The allegations contained in paragraph (18) of the Complaint are admitted.

19. The allegations contained in paragraph (19) of the Complaint are admitted.

20. The allegations contained in paragraph (20) of the Complaint are denied and the Defendants further affirmatively assert that historic, extensive and identifiable instances of racial discrimination have existed in the City of Jacksonville, particularly in the construction industry. On the basis of this racial discrimination, the subject Ordinance is needed to remedy the present effects of racial discrimination in the City of Jacksonville.

21. The allegations contained in paragraph (21) of the Complaint are admitted.

22. The allegations contained in paragraph (22) of the Complaint are admitted.

23. The allegations contained in paragraph (23) of the Complaint are admitted.

24. The allegations contained in paragraph (24) of the Complaint are admitted.

25. The allegations contained in paragraph (25) of the Complaint are admitted.

26. The allegations contained in paragraph (26) of the Complaint are admitted.

27. The allegations contained in paragraph (27) of the Complaint are admitted.

28. The allegations contained in paragraph (28) of the Complaint are admitted.

29. The allegations contained in paragraph (29) of the Complaint are admitted as to all defendants, but a study is not a condition precedent to the enactment of the subject ordinances and rules.

30. The allegations contained in paragraph (30) of the Complaint are denied and the Defendants further affirmatively assert that they have not engaged in a course of conduct which discriminates because the subject ordinance is a constitutionally protected remedy.

31. The allegations contained in paragraph (31) of the Complaint are admitted.

32. The allegations contained in paragraph (32) of the Complaint are denied and the Defendants further affirmatively assert that they have a compelling interest in the implementation of the subject Ordinance based upon historic, extensive and identifiable instances of racial discrimination by elements in the construction industry in the City of Jacksonville.

33. As to the allegations contained in paragraph (33) of the Complaint, the Defendants have no knowledge and the paragraph is therefore denied, and the Defendants further affirmatively assert that the allegations are without relevancy.

34. As to the allegations contained in paragraph (34) of the Complaint, the Defendants have no knowledge and the paragraph is therefore denied, and the Defendants further affirmatively assert that the allegations are without relevancy.

35. The allegations contained in paragraph (35) of the Complaint are admitted.

36. The allegations contained in paragraph (36) of the Complaint are admitted.

37. The allegations contained in paragraph (37) of the Complaint are denied and the Defendants further affirmatively assert that extensive and identifiable instances of racial discrimination exist in the City of Jacksonville.

38. The allegations contained in paragraph (38) of the Complaint are denied and the Defendants further affirmatively assert that extensive and identifiable instances of racial discrimination exist in the City of Jacksonville.

39. The allegations contained in paragraph (39) of the Complaint are denied and the Defendants further affirmatively assert that examination has been made and awareness of identifiable instances of racial discrimination in the City of Jacksonville exists.

40. The allegations contained in paragraph (40) of the Complaint are denied and the Defendants further affirmatively assert that allegations are without relevancy.

41. The allegations contained in paragraph (41) of the Complaint are denied and the Defendants further affirmatively assert that they have compelling interest in remedying the present effects of racial discrimination in the City of Jacksonville and therefore the subject Ordinance is not arbitrary.

42. The allegations contained in paragraph (42) of the Complaint are denied and the Defendants further affirmatively assert that the subject Ordinance is intended as a temporary and remedial measure.

43. The allegations contained in paragraph (43) of the Complaint are denied.

44. The allegations contained in paragraph (44) of the Complaint are denied.

45. The allegations contained in paragraph (45) of the Complaint are denied.

46. The allegations contained in paragraph (46) of the Complaint are denied.

47. The allegations contained in paragraph (47) of the Complaint are denied and the Defendants further affirmatively assert that they have a compelling interest in remedying the present effects of racial discrimination in the City of Jacksonville and therefore the subject Ordinance is a constitutionally protected remedy.

48. The allegations contained in paragraph (48) of the Complaint are denied.

49. The allegations contained in paragraph (49) of the Complaint are denied.

50. The allegations contained in paragraph (50) of the Complaint are denied and the Defendants further affirmatively assert that they have a compelling interest in remedying the present effects of racial discrimination in the City of Jacksonville and therefore the subject

Ordinance is a constitutionally protected remedy.

51. The allegations contained in paragraph (51) of the Complaint are denied and the Defendants further affirmatively assert that they have a compelling interest in remedying the present effects of racial discrimination in the City of Jacksonville and therefore the subject Ordinance is a constitutionally protected remedy.

52. The allegations contained in paragraph (52) of the Complaint are denied and the Defendants further affirmatively assert that Plaintiffs will have an adequate remedy at law in the event they succeed in this litigation. On the other hand, the victims of racial discrimination will suffer irreparable harm in the event subject Ordinance is not enforced.

53. The allegations contained in paragraph (53) of the Complaint are denied and the Defendants further affirmatively assert that subject Ordinance will be implemented so long as it is necessary to remedy the present effect of racial discrimination in the City of Jacksonville.

54. The allegations contained in paragraph (54) of the Complaint are denied.

55. The allegations contained in paragraph (55) of the Complaint are denied and the Defendants further affirmatively assert that they have a compelling interest in remedying the present effects of racial discrimination in the City of Jacksonville and therefore the subject Ordinance is a constitutionally protected remedy.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to WILLIAM O. MILLER, ESQUIRE, G. STEPHEN PARKER, ESQUIRE, and ROBERT B. BAKER, ESQUIRE, Southeastern Legal Foundation, Inc., 2900 Chamblee-Tucker Road, Building 4, Atlanta, GA 30341; and to JOHN W. CAVEN, JR., ESQUIRE, Caven, Clark & Ray, P.A., 3306 Independent Square, One Independent Drive, Jacksonville, FL 32202, Attorneys for Plaintiff, by mail, this 28 day of April, 1989.

/S/
Attorney

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

NORTHEASTERN FLORIDA CHAPTER OF
THE ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, a Florida Corporation
not for profit,

Plaintiff-Appellee,

v.

CITY OF JACKSONVILLE, FLORIDA, a
Florida Municipal Corporation;
TOMMY HAZOURI, in his official
capacity as Mayor of the City of
Jacksonville, Florida,

Defendants-Appellants.

CASE NO. 89-3410

March 2, 1990

Appeal from the United States District Court for the Middle District of Florida.

Before TJOFLAT, Chief Judge, EDMONDSON, Circuit Judge, and HILL, Senior Circuit Judge.

EDMONDSON, Circuit Judge:

This case involves review of a preliminary injunction prohibiting--on fourteenth amendment grounds--enforcement, until completion of a full trial to be held in the future, of a city ordinance that allocates a portion of municipal contracting dollars to businesses owned or controlled by members of minority groups. The ordinance, in pertinent part, sets aside ten percent of the amount appropriated by the City of Jacksonville for capital improvements and other construction contracts to be awarded to Minority Business Enterprises (MBEs). MBEs are enterprises which are more than fifty percent owned by women or members or designated minority groups. Plaintiff is a trade association; most of its members are not MBEs. Although we too question the ordinance's constitutionality, we reverse the grant of preliminary injunction because we believe that the district court abused its discretion in imposing such a drastic remedy in the circumstances and on the limited record before the court.

A preliminary injunction is a powerful exercise of judicial authority in advance of trial. The chief function of a preliminary injunction is to preserve the status quo until the merits of the controversy can be fully and fairly adjudicated. *Amer. Radio Ass'n v. Mobile Steamship Ass'n, Inc.*, 483 F.2d 1, 4 (5th Cir. 1973)[2]. Since 1984, the status quo in Jacksonville has been the existence of a municipal set-aside program. To justify a preliminary injunction, the plaintiff must plainly establish four preconditions: (1) a substantial likelihood that plaintiff will prevail on the merits, (2) a

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[2]In *Bonner v. City of Prichard*, 6161 F.2d 1206, 1209 (11th Cir. 1981) (*en banc*), this court adopted as precedent all decisions of the former Fifth Circuit decided prior to October 7, 1981.

showing that plaintiff will suffer irreparable injury if an injunction does not issue, (3) proof that the threatened injury to plaintiff outweighs any harm that might result to the defendants, and (4) a showing that the public interest will not be disserved by grant of a preliminary injunction. *Cunningham v. Adams*, 808 F.2d 815, 819 (11th Cir. 1987); *Johnson v. United States Dep't of Agric.*, 734 F.2d 774, 781 (11th Cir. 1984). "The preliminary injunction is an extraordinary and drastic remedy not to be granted until the movant 'clearly carries the burden of persuasion' as to the four prerequisites. 'The burden of persuasion in all of the four requirements is at all times upon the plaintiff.'" *United States v. Jefferson County*, 720 F.2d 1511, 1519 (11th Cir. 1983) (quoting *Canal Authority of State of Florida v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974)); *accord Cunningham*, 808 F.2d at 819; *Zardui-Quintana v. Richard*, 768 F.2d 1213, 1216 (11th Cir. 1985).

In this country, democracy in government is, of course, viewed as a good and normal thing. When a federal court before trial enjoins the enforcement of a municipal ordinance adopted by a duly elected city council, the court overrules the decision of the elected representatives of the people and, thus, in a sense interferes with the processes of democratic government. Such a step can occasionally be justified by the Constitution (itself the highest product of democratic processes). Still, preliminary injunctions of legislative enactments--because they interfere with the democratic process and lack the safeguards against abuse or error that come with a full trial on the merits--must be granted reluctantly and only upon a clear showing that the injunction before trial is definitely demanded by the Constitution and by the other strict legal and equitable principles that restrain courts.

The district court found for plaintiff on each of the four preconditions for a preliminary injunction. We need not address each element because we conclude that no showing of irreparable injury was made. The plaintiff's "success in establishing a likelihood it will prevail on the merits does not obviate the necessity to show irreparable harm." *United States v. Lambert*, 695 F.2d 536, 540 (11th Cir. 1983) (affirming denial of preliminary injunction in environmental case); accord *Jefferson County*, 720 F.2d at 1520 n. 21.

"The basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies." *Sampson v. Murray*, 415 U.S. 61, 88, 94 S.Ct. 937, 952, 39 L.Ed.2d 166 (1974). A showing of irreparable harm is "the *sine qua non* of injunctive relief." *Frejlach v. Butler*, 573 F.2d 1026, 1027 (8th Cir. 1978). The injury must be "neither remote nor speculative, but actual and imminent". *Tucker Anthony Realty Corp. v. Schlesinger*, 888 F.2d 969, 973 (2d Cir. 1989). An injury is "irreparable" only if it cannot be undone through monetary remedies. The key word in this consideration is *irreparable*. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." *Sampson*, 415 U.S. at 90, 94 S.Ct. at 953; *accord Jefferson County*, 720 F.2d at 1520.

The district court found that "a continuation of the MBE programs [would] result in an on-going violation of Plaintiffs' constitutional rights [which] ... by itself, is sufficient to show irreparable injury to the Plaintiffs." Order at 7. This is incorrect. No authority

from the Supreme Court or the Eleventh Circuit has been cited to us for the proposition that the irreparable injury needed for a preliminary injunction can properly be presumed from a substantially likely equal protection violation. In this case, no witnesses or other evidence was submitted on the issue of irreparable injury. The only area of constitutional jurisprudence where we have said that an on-going violation constitutes irreparable injury is the area of first amendment and right of privacy jurisprudence. *See, e.g., Cate v. Oldham,* 707 F.2d 1176, 1189 (11th Cir. 1983); *Deerfield Medical Center v. City of Deerfield Beach,* 661 F.2d 328, 338 (5th Cir. 1981). The rationale behind these decisions was that chilled free speech and invasions of privacy, because of their intangible nature, could not be compensated for by monetary damages; in other words, plaintiffs could not be made whole. The facts of this case do not fit the rationale of these decisions. This case involves neither a first amendment nor a right of privacy claim; and the damage to plaintiff here is chiefly, if not completely, economic.

Cunningham v. Adams, 808 F.2d 815 (11th Cir. 1987), concerned a claim of governmental racial discrimination in awarding contracts and a request for a preliminary injunction by the plaintiff. We concluded in *Cunningham* that, when the plaintiff's ultimate injury is that contracts will be awarded to someone else, plaintiff has failed to make a showing of irreparable injury. 808 F.2d at 821-22. As in *Cunningham,* if plaintiff is successful here, the court can direct the City to award municipal contracts to plaintiff's members who would have successfully bid for contracts in the absence of the set-aside program. Moreover, the City can award lost profits or other monetary damages to compensate a contractor that has been wrongfully denied a contract.

The district court also said that "financial hardship with difficult damage calculations *may* occur to the Plaintiffs if these programs continue to be implemented during the pendency of this lawsuit." Order at 7 (emphasis added). Nothing in the record, apart from a conclusory allegation of "irreparable harm" in the verified complaint and an assertion of speculative economic injury by plaintiff's counsel at the injunction hearing, supports the judge's finding of irreparable injury. Conjecture about a possibility of difficulties with damage computations is inadequate to support an injunction before trial. Because plaintiff presented no evidence on the issue, we cannot agree that irreparable injury is "apparent". In addition, that difficult damage calculations "may" occur is not enough. *See Sampson,* 415 U.S. at 88-89, 94 S.Ct. at 951-52. Furthermore, because no evidence was received, we may review the district court's observations on a clean slate and reach our own assessment of the nature of the injury. *See Mayo v. Lakeland Highlands Canning Co.,* 309 U.S. 310, 316, 60 S.Ct. 517, 520, 84 L.Ed. 774 (1940) ("The observations made in the course of the [trial court] opinion are not, in any proper sense, findings of fact upon these vital issues [irreparable injury]. Statements of fact are mingled with arguments and inferences for which we find no sufficient basis either in the affidavits or the oral testimony.").

The plaintiff association failed to bring forth representatives who could assert injury from the set-aside program. An association which gains standing by virtue of its membership cannot hide behind the associational structure. We expect that nonminority contractors can, by taking reasonable steps, quantify their claims for the purpose of seeking monetary relief from the City of a nonminority contractor has been improperly rejected in favor of a minority contractor. Put differently, that persons injured by the set-aside program cannot

obtain adequate relief by money damages and injunctive relief following a full trial is--from the record in this case--unclear. We conclude that plaintiff has failed to demonstrate irreparable injury entitling it to preliminary injunctive relief.

After *Richmond v. J. A. Croson*,[3] ____ U.S. ____, 109 S.Ct. 706, 102 L.Ed.2d 854 (1989), we admit to doubts about whether the Jacksonville set-aside program can survive the strict scrutiny required by the Supreme Court. Nevertheless, keeping in mind the deference due to laws enacted by democratically elected local governments, we believe that the district court should have developed a more complete record on which to evaluate the circumstances in which the Jacksonville ordinance was passed and the consequences of immediate judicial action in advance of a full and fair trial. The present record is inadequate--especially in irreparable injury--to warrant the extraordinary remedy of preliminary injunction. Because no necessity for an injunction has been shown, we REVERSE the issuance of a preliminary injunction and REMAND for an expedited trial or other disposition on the merits.

TJOFLAT, Chief Judge, specially concurring:

I concur in the judgment of the court. I agree with the court that plaintiff has not made a showing of irreparable injury sufficient to support injunctive relief. In my view, however, the plaintiff-association's failure to allege with particularity that its members suffered injury, actual or threatened, should end the inquiry at an earlier point: the plaintiff-association lacks standing to sue.[1] On this issue, I adhere to the position developed more fully in my dissent in *Sims v. Florida Dep't of Highway Safety and Motor Vehicles*, 862 F.2d 1449, 1464-68 (11th Cir.) (en banc), *cert. denied*, ____ U.S. ____, 110 S.Ct. 64, 107 L.Ed.2d 31 (1989).[2]

An association, such as the Northeastern Florida Chapter of the Association of General Contractors of America (plaintiff), may, under certain circumstances, have standing to litigate its members' claims. *See Warth v. Seldin*, 422 U.S. 490, 498-99, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343 (1975). A prerequisite of representative standing, however, is that the members would have standing in their own right were they to bring suit themselves, *see Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343-45, 97 S.Ct. 2434, 2441-42, 53 L.Ed.2d 383 (1977), and to have standing in their own right, the members would have to show that they have suffered (or will suffer) an actual (or threatened) injury, *see Valley Forge Christian College v. Americans United for Separation of Church and*

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[3]*Croson* was not a preliminary injunction case.

[1]A federal court is required to consider the question of standing whether or not it is raised by the parties: "A threshold question in every federal case is whether the plaintiff has made out a justiciable case or controversy within the meaning of article III." *Church of Scientology Flag Serv. Org. v. City of Clearwater*, 777 F.2d 598, 606 (11th Cir. 1985), *cert. denied*, 476 U.S. 1116, 106 S.Ct. 1973, 90 L.Ed.2d 656 (1986). This requires that in every case "the minimum constitutional standing requirements be demonstrated." *Id.*

[2]The *Sims* court ignored Supreme Court pronouncements on representative standing. It held cursorily that a plaintiff-association could litigate on behalf of its members but did not address the plaintiff's failure to allege that any of its members suffered actual or threatened injury. *Sims*, 862 F.2d at 1459.

State, 454 U.S. 464, 472, 102 S.Ct. 752, 758, 70 L.Ed.2d 700 (1982). As the Supreme Court stated in *Warth*, affirming the dismissal of a home builders' association's complaint on the ground that the association lacked standing:

> The complaint refers to no specific project of any of its members that is currently precluded either by the ordinance or by respondents' actions in enforcing it. There is no averment that any member has applied to respondents for a building permit or a variance with respect to any current project. . . . In short, ... Home Builders has failed to show the existence of any injury to its members of sufficient immediacy and ripeness to warrant judicial intervention.

Warth, 422 U.S. at 516, 95 S.Ct. at 2214.

In the current case, plaintiff's complaint alleges that nonminority members "would have been eligible to, and would have, bid" on contracts set aside for minority business enterprises. The complaint fails, however, to identify any member who was not allowed to bid on a particular project or to plead facts tending to establish that member's eligibility to bid. Nor does the complaint refer to any specific contract or subcontract that would have been awarded to a nonminority bidder but for the set-aside ordinance. it is the plaintiff's responsibility clearly to allege particular facts that demonstrate its standing, *see id.* at 518, 95 S.Ct. at 2215, and it is not the role of this court "to speculate concerning the existence of standing nor to [infer] support for the plaintiff," *Anderson v. City of Alpharetta*, 770 F.2d 1575, 1582 (11th Cir. 1985). Although it is a close question, I conclude that, under *Warth*, plaintiff did not fulfill its responsibility of establishing the standing of its individual members and therefore

lacks representative standing to litigate its members' claims. *See City of Alpharetta*, 770 F.2d at 1582-83 (organization lacked standing to challenge statute that forestalled development of low-income housing because organization failed to allege facts demonstrating with particularity that any individual had sought or would seek housing in area of project).

Accordingly, I concur in the judgment of the court reversing the district court's issuance of a preliminary injunction but do so because the plaintiff failed to establish its standing to challenge the set-aside ordinance.

Opinion, United States District Court
for the Middle District of Florida,
Jacksonville Division, rendered May 31, 1990 .... Pet. App.*

Opinion, United States Court of Appeals
for the Eleventh Circuit,
rendered January 28, 1992 ..... Pet. App. *

City of Jacksonville, Fla. Purchasing Code
§§ 126.601-126.611 (1984),
as amended (1988) ..... Pet. App. *

* These documents were printed in the Appendix to the Petition for Writ of Certiorari and, pursuant to Rule 26.1 of the Rules of this Court, are not reproduced in this Joint Appendix.